

EXHIBIT D

Agreed Appointment Order – Settlement Account Administrator

EXHIBIT 1.D

Agreed Appointment Order – Settlement Account Administrator

**UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

MARK MCEVOY, et al., individually and
on behalf of a proposed class,

Plaintiffs,

v.

CIVIL ACTION NO. 5:22-cv-171
Honorable Judge John P. Bailey

DIVERSIFIED ENERGY COMPANY PLC,
et al.,

Defendants.

**AGREED APPOINTMENT ORDER OF SETTLEMENT ACCOUNT
ADMINISTRATOR**

This matter is before the Court on the issue of appointment of a Settlement Account Administrator to administer the Settlement Agreement.¹ This appointment is made pursuant to Fed. R. Civ. P. 53 and the inherent authority of the Court.²

¹ Unless otherwise defined herein, all terms used in this Order that are defined terms in the Settlement Agreement have the same meaning as set forth in the Settlement Agreement.

² “Beyond the provisions of [Fed. R. Civ. P. 53] for appointing and making references to Masters, a Federal District Court has ‘the inherent power to supply itself with this instrument for the administration of justice when deemed by it essential.’” *Schwimmer v. United States*, 232 F.2d 855, 865 (8th Cir. 1956) (quoting *In re: Peterson*, 253 U.S. 300, 311 (1920)); see *Ruiz v. Estelle*, 679 F.2d 1115, 1161 n.240 (5th Cir. 1982), *cert. denied*, 460 U.S. 1042 (1983) (same); *Reed v. Cleveland Bd of Edu.*, 607 F.2d 737, 746 (6th Cir. 1979) (the authority to appoint “expert advisors or consultants” derives from either Rule 53 or the Court’s inherent power).

In accordance with Rule 53, the Court DIRECTS the Settlement Account Administrator to “proceed with all reasonable diligence” and sets out the duties and other terms of the Settlement Account Administrator’s appointment as follows:

1. **Selection of the Settlement Account Administrator:** The Court selects G. Nicholas Casey, Jr., Esq. as the Settlement Account Administrator in this case.
2. **Duties of the Settlement Account Administrator:** The Settlement Account Administrator shall have the following duties in this matter and no others:
 - a. To ensure that the Diversified Defendants meet their obligations under Article II.5 of the Agreement to submit the annual compilation of plugging reports;
 - b. To consider applications under Article II.9 of the Agreement;
 - c. To take the actions regarding breach and default as specified in Article VIII.4 of the Agreement;
 - a. Communicate and meet with counsel for the parties to discuss any issue relevant to the Special Master’s duties as the need arises; and
 - b. After conferring with counsel to Plaintiffs and the Defendants, the Settlement Account Administrator will report to the Court from time to time as the Court may order, with counsel for Plaintiffs and counsel for the Defendants copied on such correspondence.
3. **Reviewability of the Settlement Account Administrator:** The Settlement Account Administrator’s decisions are reviewable in accordance with Rule 53(f).
4. **Nature of Materials Filed as Record of Settlement Account Administrator’s Activities:** The Settlement Account Administrator shall maintain a record of any communications with the Parties or the Court as to the Settlement Agreement and any matters related thereto, any

requests from Members regarding well plugging, and the Diversified Defendants' compliance with its Plugging Promises. If such records are electronic, preservation of the emails or electronic files in the normal course of business is sufficient. If the communications are oral, the time and general nature of the discussion should be recorded. If the record is physical, the physical document should be scanned and kept in the normal course of business with other electronic records. The record need not be filed unless ordered by the Court.

5. **Time Limits:** Unless otherwise ordered by the Court, the Settlement Account Administrator's appointment shall continue until December 31, 2034, or until the Agreement is terminated, whichever occurs first.
6. **Compensation of the Settlement Account Administrator:** The Settlement Account Administrator shall receive annual compensation of \$22,500.00, which shall increase by 4% a year, cumulatively, beginning on January 1, 2026, plus reasonable expenses that are necessary for the Settlement Account Administrator to carry out its duties under this Agreement, not to exceed \$7,500 per year. Payments to the Settlement Account Administrator shall come from the Diversified Defendants.
7. **Removal:** Any Settlement Party to the Settlement Agreement who believes that the Settlement Account Administrator is not acting reasonably and in good faith executing the functions described in this Settlement Agreement may move the Court to terminate the Settlement Account Administrator upon 30 days' notice, which termination of the Settlement Account Administrator shall only occur if the Settlement Account Administrator is materially breaching its obligations under this Agreement, and a replacement shall be

selected by mutual agreement of the Settlement Parties and proposed to the Court for approval.

DATED: _____, 2024

Hon. John Preston Bailey

United States District Court